

OCT 16 1997

Before the
Federal Communications Commission
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket 97-185
Table of Allotments.)	RM-9080
FM Broadcast Stations.)	RM-_____
(Vergennes, Vermont and)	
Willsboro, and Malone, New York))	

To: Chief, Allocations Branch
 Mass Media Bureau

COMMENTS AND COUNTERPROPOSAL

Cartier Communications Inc. ("Cartier"), by its counsel, and pursuant to Section 1.420 of the Commission's Rules, hereby files its Comments and Counterproposal with respect to the Commission's Notice of Proposed Rule Making, *Vergennes, Vermont and Willsboro, New York*, DA 97-1775, released August 25, 1997 (the "NPRM").¹ In support whereof, Cartier shows the following:

Background

Cartier is licensee of WVNV(FM), operating on Channel 243A, at Malone, New York. Cartier seeks the substitution of Channel 243C3 for Channel 243A at Malone and the upgrade of WVNV to operate on Channel 243C3 at reference coordinates North latitude 44° 54' 40", West longitude 74° 06' 40". The NPRM was issued at the request of Watertown Radio Associates Limited Partnership ("Petitioner"),

¹ Comments and counterproposals are due no later than October 16, 1997; thus, this pleading is timely filed.

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 [Signature]

licensee of WXPS(FM), Channel 244A, at Vergennes, Vermont. Petitioner proposes to delete Channel 244A from Vergennes, Vermont, reallocate Channel 244A to Willsboro, New York, and modify the license of WXPS to operate at Willsboro as its new community of license. The reference coordinates proposed by Petitioner for its Willsboro facilities would be North latitude 44°24'11" and West longitude 73°26'03".

Counterproposal

General Matters. Cartier supports Petitioner's proposal to change the community of license of WXPS to Willsboro, New York; however, this counterproposal is mutually-exclusive with Petitioner's proposal since its proposal would preclude an upgrade for WVNV to Class C3. Therefore, **Cartier requests the Commission to allot the channel to Willsboro at new reference coordinates North latitude 44°19'20" and West longitude 73°21'00"** in order to provide clearance for WVNV to upgrade to Class C3 facilities consistent with the spacing requirements of Section 73.207 of the Rules. Section 1.420(g)(3) of the Commission's Rules provides that the Commission may modify a station's license to operate on a higher class of channel if the modification of license would occur on a mutually-exclusive higher class adjacent or co-channel. Cartier meets the requirements of the rule. Here, there is no choice to be made as to whether Willsboro, New York, should receive a new first local service or whether Malone, New York, should receive upgraded service on Channel

243 since both can co-exist with the modification of the Willsboro allocation reference point.²

Spacing. Attached hereto is an Engineering Statement³ prepared on behalf of Cartier showing that the proposed allotment site meets all spacing requirements to all domestic allotments or existing facilities except for the present Malone allotment with which it is mutually exclusive. The Engineering Statement indicates that the use of Channel 243C3 at Malone, New York, is short-spaced to four Canadian allotments or licensed facilities. However, with a restriction on the operation of Channel 243C3 at Malone to 150 meters HAAT and 0.200 KW ERP between 290° True and 85° True and 20 kW between 85° True and 290° True, the proposed allotment provides all necessary protection to those Canadian facilities and allotments.

Community Coverage. The Engineering Statement indicates that Malone, New York, the community of WVNV, will receive 70 dBu service from a maximum Class C3 facility operating from the proposed allotment site.

Willsboro Allotment. The Engineering Statement shows that from the Willsboro, New York, reference coordinates proposed by Cartier, all spacing requirements would be met except to the present Vergennes, Vermont, and proposed

² Under *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982), the FM priorities are (1) first aural service, (2) second aural service, (3) first local service and (4), other public interest matters. Co-equal weight is given to priorities (2) and (3).

³ Full scale maps are submitted with the original of this pleading. Reduced scale maps are submitted with the other copies. Please refer to the full-scale maps.

Willsboro, New York, allotments. The Engineering Statement provides information on the spacing between the proposed Willsboro, New York, allotment and Canadian Station CKOI-FM, Verdun, Quebec. The 34 dBu contour from the proposed Willsboro allotment site extends no farther towards CKOI-FM than does the currently proposed 34 dBu contour of the allotment site. In fact, the Engineering Statement indicates that Cartier's proposal affords more protection to CKOI-FM than does the present allotment. The Engineering Statement also shows that from the proposed Willsboro reference site, more than 85% of the corporate boundaries of Willsboro would be covered by the 70 dBu contour of the station. The area not covered is very mountainous and largely uninhabited. The counterproposal does not restrict Petitioner's ability to construct under the provisions of Section 73.215 of the Rules a full Class A facility at the site Petitioner has proposed. Such a facility would provide 100% coverage of Willsboro with a 70 dBu signal. Additionally, a full Class A facility at Willsboro will provide mutual contour protection to WVNV operating as a Class C3 station at Malone, New York, under Section 73.215 of the Rules without a directional antenna due to the terrain between the sites.

Continuing Expression of Interest

If the Commission substitutes Channel 243C3 for Channel 243A at Malone, New York, within the time allotted after the effective date of the allotment, Cartier will promptly file an application on FCC Form 301 for a construction permit to operate WVNV on Channel 243C3, and upon grant thereof, Cartier will construct the improved facilities on Channel 243C3.

Conclusion

Cartier respectfully requests the Commission to (a) substitute Channel 243C3 for Channel 243A at Malone, New York, (b) modify the license of WVNv to operate on Channel 243C3; (c) allot Channel 244A to Willsboro, New York, at reference coordinates **North latitude 44°19'20" and West longitude 73°21'00"**; and (d) modify the license of WXPS(FM) to operate on Channel 244A.

Respectfully submitted,

CARTIER COMMUNICATIONS INC.

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By: _____
Gary S. Smithwick
Its Counsel

Smithwick & Belendiuk, P.C.
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October 16, 1997

CARTIER COMMUNICATIONS INC.

**COMMENTS AND COUNTER PROPOSAL TO
NOTICE OF PROPOSED RULE MAKING
MM DOCKET NO. 97-185**

PURPOSE AND SCOPE

This Engineering Statement is prepared in support of Comments and a Counter-Proposal by Cartier Communications Inc. ("Cartier") and is filed in response to a Petition for Rule Making by Watertown Radio Associates, L.P. ("Watertown Radio") to amend the FM Table of Allotments in 47 C.F.R. 73.202(b), by the deletion of Channel 244A, Vergennes, Vermont and addition of Channel 244A, Willsboro, New York. (F.C.C. RM-9080). This counter proposal proposes the substitution of new reference coordinates for the Willsboro Allotment and proposes a change in Class and reference coordinates for the Allotment of channel 243(A) at Malone, NY.^{1/} It is requested that the allotment at Malone, NY be changed to a Class C3 with the reference coordinates and restricted facilities as proposed herein.

ALLOCATION SITUATION - MALONE

Figure 1 of this Statement is a portion of a U.S. Geological Survey 7.5 X 15 Minute Topographic Quadrangle (Chateaugay, NY) showing the proposed Malone Allotment site at N44-54-40, W74-06-40.

^{1/} Cartier Communications is the licensee of WVN(FM), 243(A), Malone, NY (F.C.C. File No. BLH-920511KF)

ALLOCATION SITUATION - MALONE (Continued)

DOMESTIC SITUATION:

The proposed Malone site is located in the town of Chateaugay, Franklin County, New York. The ground level at the proposed site is 320 meters above mean sea level.

The site proposed for the allotment meets all spacing requirements to all domestic allotments or permitted/licensed facilities as specified in 47 C.F.R. 73.207(b)(1) except the present Malone allotment with which it is mutually exclusive.

CANADIAN SITUATION

The proposed new allotment site for Malone, NY is short spaced to four Canadian allotments and/or licensed facilities. Figure 3 of these comments is a portion of a Montreal Sectional Aeronautical Chart showing the pertinent protected Canadian facility contours and the interference contours generated by the operation of a Class C3 facility at the proposed Malone allotment site. With a restriction on the operation of the proposed Malone allotment operation to 150 meters HAAT and an ERP of 0.200 kW between 290° True and 85° True and 20.0 kW between 85° True and 290° True, the proposed allotment provides all necessary protection to those Canadian facilities and allotments.

As shown on Figure 3, the Malone 74 dBu f(50,10) contour and 94 dBu f(50,10) do not cross the U.S. - Canada border. The Malone 34 dBu f(50,10) contour does not intersect the 33 km maximum protected contour of the Class A allotment in Buckingham, QU, nor the 86 km maximum contour of the Class C1 allotment in Trois Rivières, Qu.

COMPLIANCE WITH 47 C.F.R. 73.315

A maximum Class C3 facility (as limited to 20 kW at 150 meters HAAT) at the Malone proposed allotment site provides 70 dBu f(50,50) coverage of the entire Village of Malone, NY. Figure 3 of these Comments shows an outline of the Village of Malone and the 70 dBu f(50,50) contour generated by a facility at the proposed Malone allotment site with an ERP of 20 kW (between 85° and 290° True) at an eight radial average HAAT of 150 meters.

ALLOCATION SITUATION - WILLSBORO

Figure 2 of this Statement is a portion of a U.S. Geological Survey 7.5 X 15 Minute Topographic Quadrangle (Willsboro, NY-VT) showing the proposed amended Willsboro Allotment site at N44-19-20, W73-21-00. The proposed site is located in the town of Essex, Essex County, New York. The ground level at the proposed site is 48 meters above mean sea level.

DOMESTIC SITUATION:

The site proposed for the Willsboro allotment meets all spacing requirements to all domestic allotments or permitted/licensed facilities as specified in 47 C.F.R. 73.207(b)(1) except the present Vergennes allotment and Willsboro PRM allotment site with which it is mutually exclusive.

No other modifications to the FM Table of Allotments is required nor requested by this Counter Proposal..

CANADIAN SITUATION-WILLSBORO

The present Vergennes allotment site at N44-10-00, W73-15-18 is a specially negotiated short-spacing, proposed to Canada as a Class B1 operation on January 31,

1992 and accepted by Canada on May 5, 1992. The present allotment is short-spaced to CKOI-FM, Verdun, QU.

The allotment site proposed by Watertown, and the site proposed in these comments are also short-spaced per the requirements of 47 C.F.R. 73.207(b)(2) to CKOI-FM.

Watertown Radio requested that the proposed allotment be treated as a Class B1 allotment with a restriction on facilities limited to 1.9 kW ERP at an Effective Antenna Height of 246 meters above average terrain with respect to Canada. This counter proposal also requests that the new allotment site be treated as a Class B1 with respect to Canada with an ERP restricted to 8.5 kW at 100 meters HAAT. At this ERP and HAAT the 34 dBu f(50,10) contour from the newly proposed allotment site extends no further toward CKOI-FM (or in any direction toward Canada) than does the 34 dBu f(50,10) contour generated by a maximum Class B1 facility at the present allotment site.

Figure 4 of this Statement is a portion of a New York and Montreal Sectional Aeronautical Chart showing the 34 dBu f(50,10) contours from a maximum Class B1 facility at the present Vergennes allotment site and a 8.5 kW 100 meter HAAT facility from the newly proposed Willsboro allotment site.

Cartier Communications Inc. believes this proposal should be acceptable to Canada since the new allotment affords more protection to the operation of CKOI-FM than does the present allotment.

COMPLIANCE WITH 47 C.F.R. 73.315-WILLSBORO

A maximum Class A facility (6.0 kW, 100 meters HAAT) at the Willsboro proposed site provides 70 dBu f(50,50) coverage of more than 85% of the community of Willsboro, NY. Figure 3 of this Statement shows the 70 dBu contour generated by a maximum Class A facility and the corporate boundaries of Willsboro, NY. The area of

Willsboro not covered by the 70 dBu contour is very mountainous and largely uninhabited. This counter proposal in no way restricts Watertown's ability to construct a full Class A facility at the site they have proposed.^{2/} That site, as shown in their petition, provides 100% coverage of the Town of Willsboro with the 70 dBu contour.

SUMMARY

The modifications of the FM Table Of Allotments requested in these Comments will provide the change of city of license for WXPS(FM) requested in Watertown's Petition for Rule Making and provide an upgrade in Class for Malone, NY (WVNV(FM)). The proposed change in reference coordinates for the Willsboro allotment (WXPS(FM)) allows the upgrade for Malone while not preventing WXPS(FM) from constructing a new facility at the site Watertown originally proposed in its Petition.

^{2/} A full Class A facility at the Watertown proposed Willsboro allotment site and a full Class C3 facility at the proposed Malone allotment site provide mutual contour protection (pursuant to 47 C.F.R. 73.215) to each other due to the terrain between the sites without the use of a directional antenna by WXPS(FM) and without any power limitation on WVNV(FM) toward Willsboro.



Robert M. Smith Jr.

STATEMENT OF QUALIFICATIONS

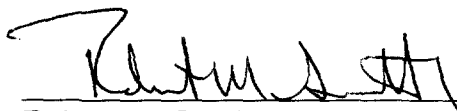
I, Robert M. Smith Jr. of Windham, New Hampshire, state:

That I was retained by the Cartier Communications Inc. to prepare the Statement and exhibits contained herein, and that all statements and data contained herein are true and accurate to the best of my knowledge and belief;

That I am an experienced and qualified radio broadcast engineer;

That I am the Proprietor of R.M. Smith Associates, a broadcast technical consulting firm in Windham, New Hampshire; and

That my qualifications are a matter of record with the Federal Communications Commission, having filed applications and technical measurements with it on numerous occasions in the past.


Robert M. Smith Jr.

R. M. SMITH ASSOCIATES
Broadcast Technical Consultants
8 Deer Run Road
WINDHAM, NEW HAMPSHIRE 03087
(603) 894-6968

FIGURE 1
PROPOSED ALLOTMENT SITE
CHANNEL 243 - CLASS C3
MALONE, NY
October 1997

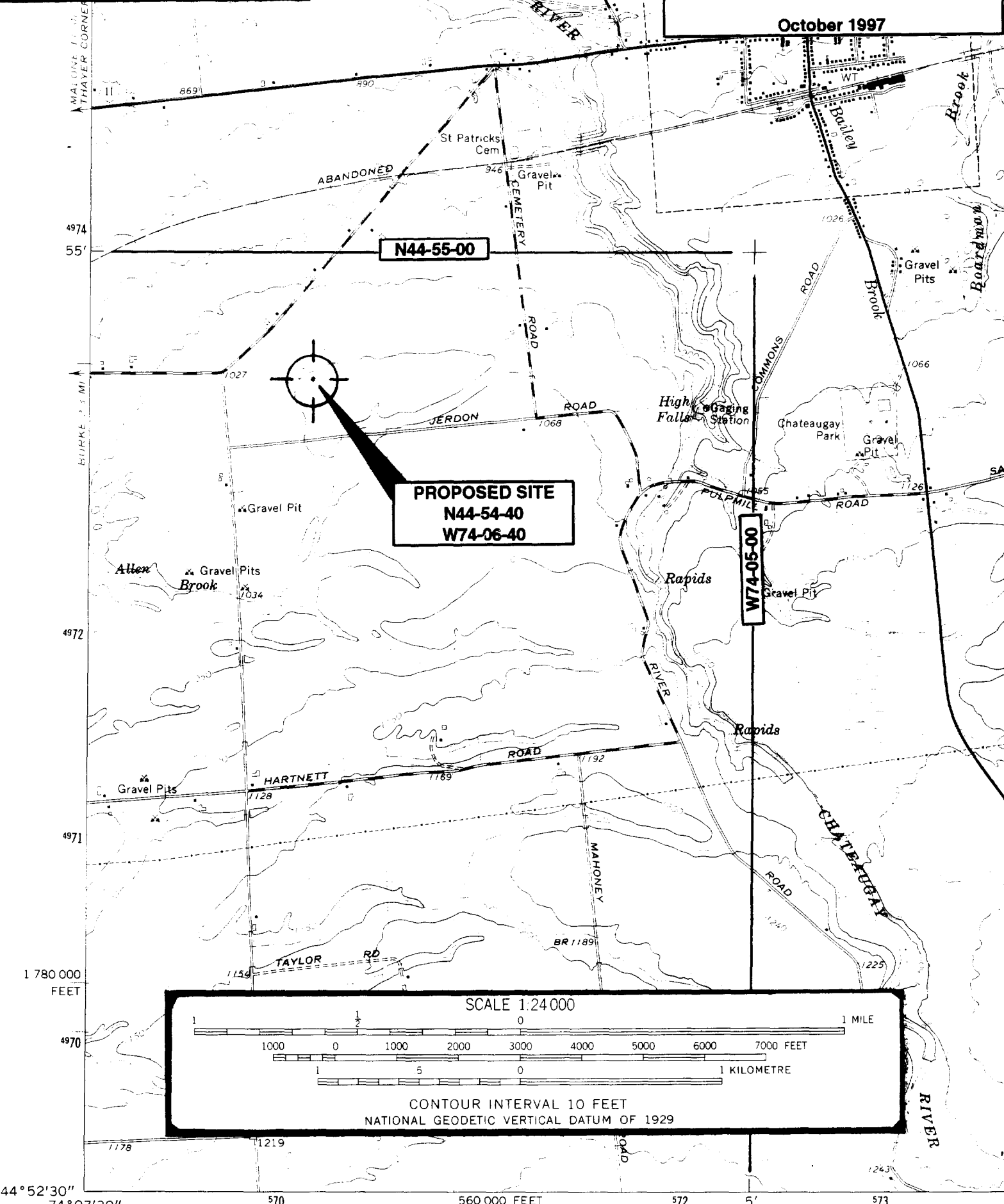
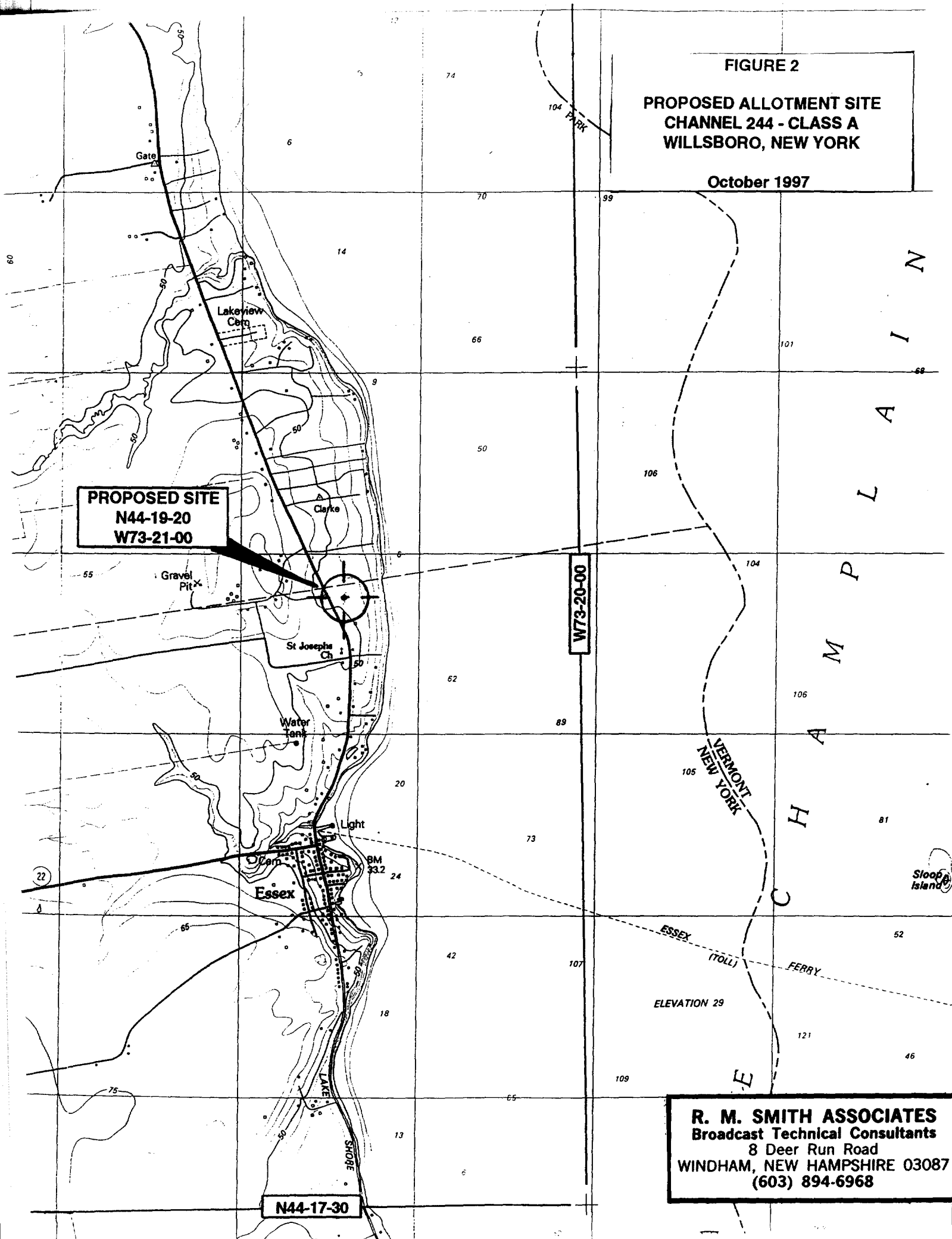


FIGURE 2

PROPOSED ALLOTMENT SITE
CHANNEL 244 - CLASS A
WILLSBORO, NEW YORK

October 1997



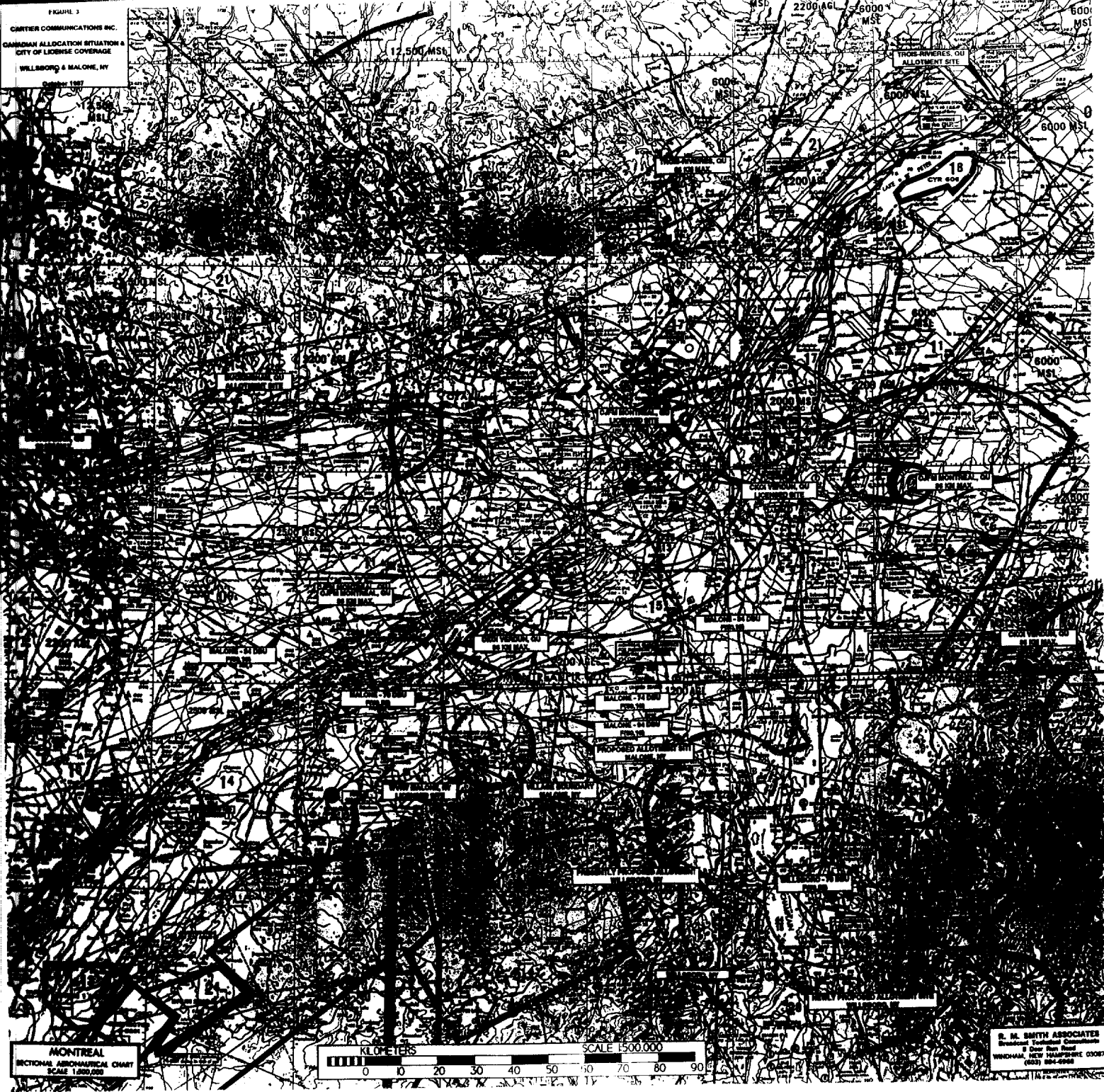


FIGURE 3

CARTIER COMMUNICATIONS INC.

**CANADIAN ALLOCATION SITUATION &
CITY OF LICENSE COVERAGE**

WILLSBORO & MALONE, NY

October 1997

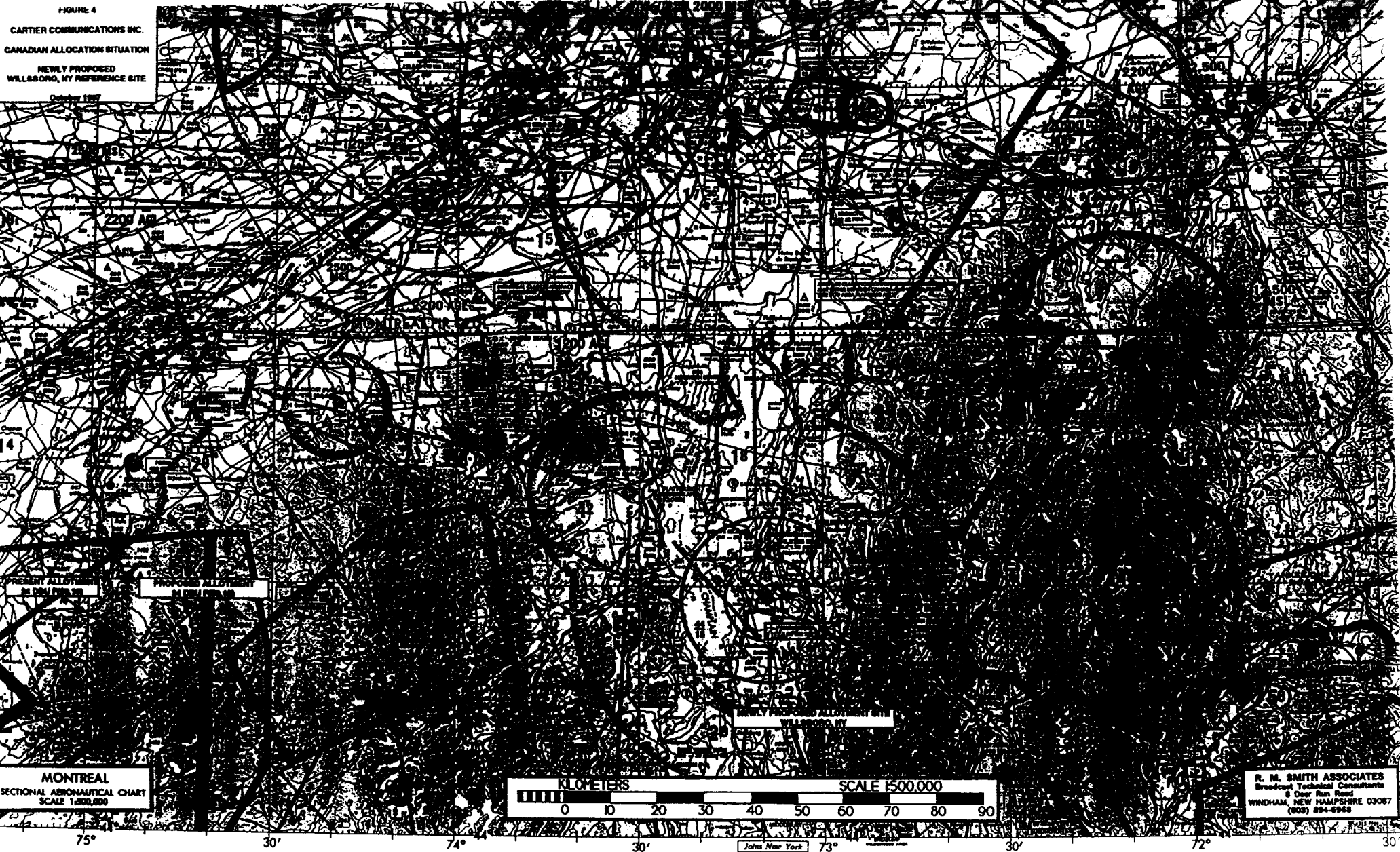


FIGURE 4

CARTIER COMMUNICATIONS INC.
CANADIAN ALLOCATION SITUATION
NEWLY PROPOSED
WILLSBORO, NY REFERENCE SITE

October 1987

CERTIFICATE OF SERVICE

I, Angela Y. Powell, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that a copy of the foregoing Comments and Counterproposal was mailed, via first class mail, postage pre-paid, this the 16th day of October 1997, to the following:

David G. O'Neil, Esq.
Rini, Coran & Lancellotta, P.C.
1350 Connecticut Ave., N.W.
Suite 900
Washington, D.C. 20036
(Counsel for Petitioner)


Angela Y. Powell